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MICHAEL RODAK, JR.,

No. 80-251

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

BERNARD ROSTKER,
Director of Selective Service,
Appellant,

v.

ROBERT L. GOLDBERG, *et al.*,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTION TO INTERVENE OF STACEY ACKER, CHRISTINA ANDRES, KATHRYN BARR, ALMEDA CANNON, ELIZABETH CREMERS, MONICA DEWIT, MARY DOLEHIDE, ESTHER GLUCKSMAN, ANNA HARRINGTON, LAURA HEADLEE, CORLISS JARRETT, KAREN JOHNSON, PAM PATRICK, FELICITY SMITH, KATHLEEN SULLIVAN, and AGNES ZEPEDA

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Stacey Acker and fifteen other female citizens of the United States between the ages of 18 and 26 hereby move, pursuant to Rule 42 of the Rules of this Court, for leave to intervene as appellants in this case, if probable jurisdiction is noted, in order to represent, by written brief and oral argument, the interests of millions of women who will be vitally affected by the disposition

of this appeal but who are not presently parties to this litigation. As is shown more fully below, the individual Movants filed timely applications to intervene in the United States District Court for the District of Columbia when it was publicly announced that the issue decided in this case would be tested in that court. By happenstance, however, the constitutional issue was argued and first decided in the present case—a lawsuit which had received virtually no public attention and which had lain dormant for many years. As a result, the litigation in the District of Columbia (including the Movants' request to intervene) has been stayed pending disposition of this appeal. Since the Movants represent views which differ sharply from those of the Executive Branch, and since the issue presented in this case—*i.e.*, the constitutional validity of the exemption from the draft which Congress has always conferred upon women—turns on considerations beyond those relating to the efficiency of the military, participation of the Movants as parties will provide the Court with a much more complete and adverse presentation of the relevant issues than it can receive from the present parties.

STATEMENT

This case involves the constitutionality of Congress' decision to continue to exempt women from compulsory military service by excluding them from the draft registration provisions of the Military Selective Service Act, 50 U.S.C. App. §§ 451 *et seq.*

Sections 3 and 4 of the Act, 50 U.S.C. App. §§ 453 and 454, set forth which individuals are subject to registration for, and training and service in, the Armed Forces. The provisions, which are implemented "by proclamation of the President," specifically limit liability

for military registration and induction to males between the ages of eighteen and twenty-six. On March 29, 1975, in accordance with a decision to utilize an "all-volunteer" approach to fulfill the country's military needs, President Ford ordered an end to nearly 30 years of registration under the Act. *Presidential Proclamation* No. 4360, 11 Weekly Comp. of Pres. Doc. 318 (1975) (R. 192-193).[1]

The registration requirements of the Act remained suspended until this year when, largely in response to the Soviet Union's invasion of Afghanistan, Congress and the Executive Branch took steps to reinstate registration procedures. In February, the President recommended to Congress that selective service registration be reinstituted. *Presidential Recommendation for Selective Service Reform:* A Report to Congress pursuant to Pub. L. 96-107 (Feb. 11, 1980) (R. 196). Included in that recommendation was a proposal that the Military Selective Service Act be amended to provide for the registration of women as well as men. *Id.* at 24-28 (R. 221-225). After conducting hearings, Congress agreed that military registration should be reinstituted and, on June 12, 1980, passed Joint Resolution 521, which allocated $13,285,000 for salaries and expenses of the Selective Service System for the fiscal year ending September 30, 1980. H.R.J. Res. 521, 96th Cong., 2d Sess., 126 *Cong. Rec.* S6773 (1980). Congress refused, however, to follow the administration's recommendation to amend the Military Selective Service Act to eliminate the exclusion of women. The Selective Service System then promulgated new regulations setting forth procedures for an all-male registration. 45 *Fed. Reg.* 40577 1980). President Carter signed Joint Resolution 521 on June 28, 1980, and on July 2, 1980, issued Presidential

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[1] "R." refers to the Joint Documentary and Stipulated Record (Revised).

Proclamation No. 4771, 45 *Fed. Reg.* 45247. Under that Proclamation and the Selective Service regulations, males born in 1960 were obliged to register for military service during the week of July 21, 1980, and males born in 1961 were obliged to do so during the following week. Because of Congress' refusal to amend the Military Selective Service Act, women born during 1960 and 1961 were not required to register for military service.

The complaint in this suit was filed in June 1971, long before both the suspension of draft registration by President Ford and Congress' recent reconsideration of the appropriateness of excluding women from compulsory military service. The plaintiffs—men subject to military registration and induction—alleged that the Military Selective Service Act violated several of their constitutional rights, including their Fifth Amendment right to equal protection. Their application for a three-judge court under the then-applicable statute, 28 U.S.C. § 2282, was denied. 341 F. Supp. 339 (E.D. Pa. 1972). On appeal, the Court of Appeals upheld the dismissal of all of the challenges to the Act except for the sex-based equal protection claim, and remanded the case for a determination of the substantiality of that claim and of plaintiffs' standing to raise it. 480 F.2d 545 (3d Cir. 1973) (per curiam). On remand, the District Court convened a three-judge court. That court, with one judge dissenting, denied the defendants' motion to dismiss. 378 F. Supp. 766 (E.D. Pa. 1974).

For five years after the three-judge court's refusal to dismiss the suit there were no proceedings in the case. In June 1979, apparently in response to the court's proposal to dismiss the case for inaction, further discovery ensued. The court denied defendants' motion for summary judgment on February 19, 1980, and on

July 1, 1980, certified a plaintiff class of potential male registrants.

On July 18, 1980, the court issued its opinion enjoining registration under the Military Selective Service Act and denying the defendants' request for a stay pending appeal. After confirming the plaintiffs' standing to raise their equal protection challenge and finding the case ripe for review, the court held that because the Act discriminates on the basis of sex, the exclusion of women from compulsory registration and potential induction must, under *Craig v. Boren,* 429 U.S. 190, 197 (1976), and its progeny, serve "important governmental objectives and must be substantially related to the achievement of those objectives." The Court then reviewed evidence presented by the Executive Branch in support of its proposal for a gender-neutral military registration, and, relying heavily on this evidence, concluded (Juris. St.[2] 38a-39a):

> [i]t is incongruous that Congress believes on the one hand that it substantially enhances our national defense to constantly expand the utilization of women in the military, and on the other hand endorses legislation excluding women from the pool of registrants available for induction.

Because the Court found it "difficult to accept the inconsistent positions of Congress" (Juris. St. 38a-39a), it held that the exclusion of women from compulsory military service could not pass muster under a heightened standard of review applied to gender-based distinctions. The Court ignored the vastly different societal impact between offering women who wish to volunteer a mean-

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[2] "Juris. St." refers to the Appellant's Jurisdictional Statement previously filed with this Court.

ingful opportunity to serve in the Armed Forces and compelling all women to do so. We believe that the court's view that an exemption of women from draft registration is inconsistent with efforts to "expand the utilization" of *volunteer* women in the military overlooks the fact that differences between the sexes are still a vital part of the fabric of our society and ignores cultural values with roots as deep as western civilization itself.

On July 19, 1980, Mr. Justice Brennan, noting the "sensitive context" in which the gender-based discrimination at issue in this case occurs, granted the Government's application for a stay pending appeal. Juris. St. 47a-52a.

REASONS TO GRANT INTERVENTION

I.

THE MOVANTS ADVOCATE FUNDAMENTAL SOCIETAL INTERESTS AND VALUES THAT THE GOVERNMENT HAS DECLINED TO PRESENT

The Movants are sixteen women between the ages of 18 and 26 who would be subject to registration and induction if the registration and induction provisions of the Selective Service System, 50 U.S.C. App. § 453, 454, were required by the Constitution to be gender-neutral.[3]

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[3]The pleading filed when the Movants sought to intervene in the District Court for the District of Columbia alleged the following:

(1) Stacy Acker is a female resident of Alabama and a citizen of the United States. She was born on September 7, 1960. Miss Acker hopes to marry and have children. Registration and potential induction into military service would hinder and disrupt these plans. Miss Acker believes that Congress properly exempted women from registration and compulsory military service because

[footnote continued]

They believe, for a variety of reasons with broad societal significance, that Congress acted properly in continuing

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women should not be conscripted during their best child-bearing years and because women who are mothers have a greater responsibility to care for their small children than to engage in military service.

(2) Christina Andres is a female resident of Florida and a citizen of the United States. She was born on November 28, 1960. Miss Andres does not want to serve in the Armed Forces because she is not prepared to be assigned to military combat. She believes that Congress properly exempted women from registration and compulsory military service because compulsory induction will necessarily lead to assignment to the battlefield, no matter what the job is labelled.

(3) Kathryn Barr is a female resident of Wisconsin and a citizen of the United States. She was born on May 9, 1960. Miss Barr has engaged in competitive sports and knows that she cannot compete successfully against males in any contest which requires upper-body strength. She believes that Congress properly exempted women from registration and compulsory military service because women are unable to match men in this important physical characteristic, which may be a matter of life or death in military combat.

(4) Almeda Cannon is a female resident of Tennessee and a citizen of the United States. She was born on January 27, 1962. Miss Cannon does not want to serve in the Armed Forces because she fears sexual abuse. She believes that Congress properly exempted women from registration and compulsory military service because of the great potential for sexual abuse if women were inducted, as described in Congressional hearings conducted last year.

(5) Elizabeth Cremers is a female resident of Illinois and a citizen of the United States. She was born on June 5, 1961. Miss Cremers does not want to serve in the Armed Forces because she does not want to be responsible for endangering men who serve with her, particularly in combat situations, who might instictively protect her while jeopardizing their military missions. She believes that Congress properly exempted women from registration and compulsory military service because it recognized that, as a result of instinct and training, many male members of the Armed Forces would not be able to treat women as equals in military situations.

(6) Monica Dewit is a female resident of New Jersey and a citizen of the United States. She was born on June 4, 1962. Miss

[footnote continued]

the draft's exemption for women, and they desire that the exemption continue. The Movants believe that it

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Dewit does not want to serve in the Armed Forces because she fears that if she were ever captured by the enemy, she could not survive as a prisoner of war. She believes that Congress properly exempted women from registration and compulsory military service because it recognized that if women were inducted into the military and were ever captured in actual conflict, they would be subject to much worse treatment than men.

(7) Mary Dolehide is a female resident of Illinois and a citizen of the United States. She was born on September 5, 1962. Miss Dolehide does not want to register and serve in the Armed Forces because she knows, from having heard the public testimony of Defense Department officials, that there are few practical restraints on the kinds of duties to which the Army may assign female inductees and because certain assignments, particularly those in combat zones, are tasks she cannot and will not perform. She believes that Congress properly exempted women from registration and compulsory military service because it knew that, if inducted, women might be deployed by the Army in combat zones.

(8) Esther Glucksman is a female resident of New York and a citizen of the United States. She was born on January 24, 1960. Miss Glucksman does not want to register and serve in the Armed Forces because she cannot participate in compulsory military service in any capacity, including alternative civilian service, without violating her religious principles, based on Orthodox Jewish law relating to modesty by women ("*tznius*"), as authoritatively prescribed by rabbinic decision. She believes that Congress properly exempted women from registration and compulsory military service because it knew that many women in the United States have religious scruples against compulsory service relating particularly to their status as women.

(9) Anna Harrington is a female resident of Virginia and a citizen of the United States. She was born on June 12, 1962. Miss Harrington does not want to serve in the Armed Forces because she believes that combat and other tasks performed by those in military service are, by tradition and by actual performance, more capably done by men than by women. She knows that she cannot engage in actual combat with enemy male troops, and she believes that women in military service will endanger not only their own lives but those of other soldiers. Miss Harrington

[footnote continued]

is imperative that this Court not determine the constitutionality of an all-male Selective Service System

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believes that Congress properly exempted women from registration and compulsory military service because it recognized that men can fight and do military jobs better than women.

(10) Laura Headlee is a female resident of Michigan and a citizen of the United States. She was born on March 13, 1961. Miss Headlee does not want to register and serve in the Armed Forces because doing so would conflict with her beliefs, based upon her upbringing and religious background, that men are responsible for protecting the country and women are responsible for maintaining the home and caring for the family. She believes that Congress properly exempted women from registration and compulsory military service because it knew that many women in the United States would find military service, in any capacity, to be an infringement upon their rights of conscience and free exercise of religion.

(11) Corliss Jarrett is a female resident of Tennessee and a citizen of the United States. She was born on February 11, 1962. Miss Jarrett is the mother of a baby, and she has no husband. She does not want to serve in the Armed Forces because she will not be able adequately to care for her child while she is in military service. Miss Jarrett believes that Congress properly exempted women from registration and compulsory military service because it recognized that single mothers of small children are more greatly needed to care for their children than are single fathers, and that even the uncertainty of possible induction would disrupt the upbringing of these children.

(12) Karen Johnson is a female resident of Tennessee and a citizen of the United States. She was born on October 21, 1960. Miss Johnson does not want to serve in the Armed Forces because her right of privacy would be violated in military life, which is governed by male culture, and which accepts body contact, foul language, and personally offensive remarks which she, as a lady, finds obnoxious. She believes that Congress properly exempted women from registration and compulsory military service because it recognized that involuntary induction into the Armed Forces would subject many women in the United States to invasions of privacy and mental suffering relating directly to their identity and self-image as females.

(13) Pam Patrick is a female resident of North Carolina and a citizen of the United States. She was born on April 4, 1961. Miss

[footnote continued]

without full presentation and consideration of the reasons, including sociological, psychological and reli-

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Patrick does not want to serve in the Armed Forces because her upbringing as a Christian woman has taught her that women should produce life, not destroy it. She believes that she cannot be trained to kill, even if she were never actually assigned to combat duty. She also fears physical injury which might result from training or combat. Miss Patrick believes that Congress properly exempted women from registration and compulsory military service because it recognized that many women in the United States would be unable, by reason of their upbringing as women and their feminine self-image, to participate in any way in a governmental function dedicated to the destruction of human life, and that physical disfiguration would be much more devastating to women than to men.

(14) Felicity Smith is a female resident of Missouri and a citizen of the United States. She was born on January 30, 1960. Miss Smith does not want to serve in the Armed Forces because she would find intolerable the lack of privacy in daily military life, particularly the dressing, bathing, toilet and sleeping facilities. These aspects of military life are contrary to her nature as a woman and to the personal behavior and habits which are part of her feminine nature. She believes that Congress properly exempted women from registration and compulsory military service because it recognized that many women in the United States would be unable to accept the military's infringements on privacy which would conflict with values with which they were raised.

(15) Kathleen Sullivan is a female resident of Illinois and a citizen of the United States. She was born on May 8, 1958. Miss Sullivan is engaged to be married to a man who has completed his military service. Her prospective husband would, therefore, not be subject to induction. The possibility that Miss Sullivan would be subject to involuntary induction would have a drastic effect on the prospective family's plans to have children. Miss Sullivan believes that Congress properly exempted women from registration and compulsory military service because even the possibility of involuntary induction of women would seriously affect the personal family decisions of many married couples.

(16) Agnes Zepeda is a female resident of Washington and a citizen of the United States. She was born on October 5, 1959. She does not want to serve in the Armed Forces because she

[footnote continued]

gious grounds, why millions of women oppose compulsory service in the Armed Forces. It is evident from both the Government's position below and its Jurisdictional Statement in this Court that the Government does not intend to press the interests Movants represent or the considerations Movants wish to present to this Court. These considerations apply exclusively to women and warrant the legislative exemption now granted them from registration and induction into the Armed Forces. In a case of this magnitude, where "[t]he importance of the question and substantiality of the constitutional issues are beyond cavil" (Juris. St. 50a; Mr. Justice Brennan, in chambers), Movants should be permitted to intervene to urge the important interests they represent in a fully adversarial manner.

Movants did not previously attempt to intervene in this case because neither they nor their counsel were aware of it until after the highly publicized case of *Barnett v. Rostker,* No. 80-1578, was filed in the District Court for the District of Columbia on June 26, 1980. By that time, this case had been fully briefed, and was scheduled shortly to be argued and decided by the District Court, thus rendering any meaningful intervention below in this case impossible.[4] However, recognizing

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knows, from having grown up with brothers in the family, that she is unable to equal men in performing tasks which require physical strength and agility, and she does not want the national defense to depend on her ability to perform physically taxing jobs. She believes that Congress properly exempted women from registration and compulsory military service because Congress knows that most tasks to be performed in military service could be done better by men than by women.

[4]Given the procedural history of this case, it is understandable why it was unpublicized and unknown to Movants and their

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that they had very substantial interests in the outcome of litigation challenging the constitutionality of an all-male registration and induction program, Movants moved to intervene in the *Barnett* case several days after it was filed. After the decision below in this case and the Government's appeal to this Court, the District Court in *Barnett* stayed proceedings in that case without ruling on Movants' motion to intervene. Thus, although Movants have diligently tried to protect their interests in the exemption under challenge here, they will be denied a meaningful opportunity to do so unless this Court allows them to interevene now.

Moreover, the Movants' interests are ones which the Government—the sole appellant—has clearly indicated it will not urge before this Court. The Government is concerned principally with the effective administration of the Armed Forces and not with the sociological, psychological or religious consequences to millions of women in the United States of a precedent-breaking law that would subject women to military conscription. Thus, the Government's Jurisdictional Statement, consistent with its position below, stresses the Government's interest in an efficient mechanism for induction into, and the combat-readiness of, the Armed Forces. The

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counsel until after the filing of *Barnett*. The complaint in this case was filed in 1971, and all of the litigation in the case, except that immediately preceding the decision now before this Court, occurred prior to July 1, 1974. During this period, all-male conscription was repeatedly upheld in the face of Equal Protection challenges similar to the one at issue in this case. *See, e.g., United States v. Baechler*, 509 F.2d 13 (4th Cir. 1974), *cert. denied*, 421 U.S. 993 (1975); *United States v. Camara*, 451 F.2d 1122 (1st Cir. 1971), *cert. denied*, 405 U.S. 1074 (1072). The case remained so dormant after 1974 that, in June 1979, the District Court proposed to dismiss the case for failure to prosecute it.

Movants, on the other hand, are concerned with the detrimental effects on the women of this country that subjecting them to draft registration and induction might have.[5]

II.

THE GOVERNMENT, WHICH IS THE SOLE APPELLANT, IS NOT TOTALLY ADVERSE TO THE APPELLEES' POSITION

In light of the Executive Branch's previous opposition to an all-male draft, it can hardly be said that the Government's interests are fully adverse to those of the appellees. The responsible officials of the Executive Branch, including even the President and the primary named defendant in this case, have publicly disagreed with Congress' judgment that women should be exempt from the draft. The knowledge of the court below of the public pronouncements of the President and his subordinate Executive Branch officials undoubtedly played a large role in its decision. Indeed, the views of the Executive Branch are cited throughout the opinion below. *See* Juris. St. pp. 21a-22a, n.13; pp. 28a-30a, nn.18, 19; p. 31a; pp. 33a-38a, nn.25-28. Given the role of Executive Branch opinion in prompting the District Court's conclusion that Congress was "inconsistent" in encouraging the recruitment of women for the Armed Forces while exempting women from compulsory military service, a fully adversarial presentation of the case for excluding women from the draft requires the

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[5]The fact that women have been *voluntarily* serving the Armed Forces does not undercut Movants' position. Movants believe that women who want to serve in the military should be permitted to do so, but that women as a class are entitled to be exempt from *compulsory* military service.

intervention of interested parties other than the Justice Department.

The Movants are particularly well-suited for this role. Their personal interest in this case is virtually a mirror-image of the interest of the appellees. The appellees brought this action because they believe that Sections 3 and 4 of the Military Selective Service Act unconstitutionally require them to register and submit for induction while it exempts similarly situated females. The Movants typify the similarly situated females who are exempt, and who, if appellees prevail, will necessarily become subject to the same burdens that the appellees challenge.[6]

Although intervention in this Court is not common, there is ample precedent to support it. *See, e.g., Hunter v. Ohio ex rel. Miller,* 396 U.S. 879 (1969); *Banks v. Chicago Grain Trimmers Association, Inc.,* 389 U.S. 813 (1967), *decision on the merits,* 390 U.S. 459 (1968); *NLRB v. Acme Industrial Co.,* 384 U.S. 925 (1966), *decision on the merits,* 385 U.S. 432 (1967). Indeed, in *Eastern-Central Motor Carriers Association v. United States,* 321 U.S. 194 (1944), the Court permitted intervention in a situation analogous to that presented here. *Eastern-Central* involved an appeal from the decision of a three-judge district court sustaining an ICC decision rejecting certain rate schedules proposed by Eastern-

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[6]It is no answer to say that if the all-male draft is held unconstitutional, Congress could decide to have no draft at all, thereby relieving both sexes of this burden. Our national history has convincingly demonstrated that, even if only for times of actual conflict, a draft law is a necessity. Thus, an invariable consequence of a decision for the appellees would be to subject the Movants to the draft.

Central. The Court allowed the National Industrial Traffic League, a group whose members would be affected by the outcome of the rate proceedings, to intervene on appeal despite the fact that the League, "not having notice of the proceedings there until after the argument there," did not appear in the District Court. 321 U.S. at 198 n.5. So, too, the Movants here, having a direct and substantial interest in the outcome of this suit but unable to intervene in a timely manner below, should be permitted to intervene here.

The filing of an *amicus curiae* brief is not an adequate substitute for intervention. Appearance as of right—both by briefs and by oral argument—is a significant element in the actuality and appearance of justice. And it is important, in a case that so vitally affects the lives of millions of women in the United States, that their position be heard orally, as well as in briefs, with the full dignity and right of a party.

III.

THE LEGISLATIVE HISTORY DEMONSTRATES THAT THE CONCERNS REPRESENTED BY THE MOVANTS, WHICH THE GOVERNMENT WILL NOT URGE, WERE IMPORTANT TO THE CONGRESS

The District Court failed to take into account the overwhelming and unacceptable impact on this country's women of *compelling* them to participate in military conscription and the undesirable effects such a gender-neutral draft would have on our national resolve. It improperly analyzed the constitutionality of the all-male draft in isolation from the social context in which any system of military conscription must take place.

The District Court's perception of this case contrasts sharply with the considered judgment of Congress that

> there are important societal reasons for not changing our present male-only system of registration and induction. The question of who should be required to fight for the nation and how best to accomplish that end is a social issue of the highest order, with sweeping implications for our society. In addition to the military reasons, which the Committee finds compelling, witnesses representing a variety of groups testified before the Subcommittee that drafting women would place unprecedented strains on family life, whether in peacetime or in time of emergency. If such a draft occurred at a time of emergency, unpredictable reactions to the fact of female conscription would result. A decision which would result in a young mother being drafted and a young father remaining home with the family in a time of national emergency cannot be taken lightly, nor its broader implications ignored. The Committee is strongly of the view that such a result, which would occur if women were registered and inducted under the Administration plan, is unwise and unacceptable to a large majority of our people.

Report of the Senate Subcommittee on Manpower and Personnel on the Rejection of Legislation Requiring the Registration of Young Women Under the Military Selective Service Act, 5 (April 22, 1980) (R. 878). Indeed, it was Congress' belief that, in the words of Senator Heflin, "the opposition to registering women is so widespread and pervasive that if young women were required to register, it might jeopardize the whole registration program." 126 *Cong. Rec.,* S. 1242 (Feb. 7, 1980). Such assessments of the broad social impact of a decision to draft women are within the unique province of Congress to make and are not for the courts to ignore, especially where, as here, questions of our national defense and Congress' power under Article I, § 8 are concerned. *Schlesinger v. Ballard,* 419 U.S. 498, 510 (1975); *United States v. O'Brien,* 391 U.S. 367, 377 (1968).

Moreover, the disruptive society-wide impact that Congress perceived would flow from a decision to subject women to compulsory military service illuminates a second reason why the court below erred. Unlike the statutes at issue in such cases as *Wengler v. Druggists Mutual Insurance Co.*, 100 S. Ct. 1540 (1980); *Califano v. Goldfarb*, 430 U.S. 199 (1977); and *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975), the challenged provisions of the Military Selective Service Act do not "employ gender as an inaccurate proxy for other, more germane bases of classification." *Craig v. Boren*, 429 U.S. 190, 198 (1976). Congress has chosen to exempt women from compulsory military service not because it views sex as a rough measure of the ability of a given individual to perform a specific job in the military, but because in this particular area the different sexes should be treated differently. The consequences of ignoring differences based upon gender and forcing unwilling women into military service are, in Congress' view, unacceptable to the country as a whole.

Congress' decision not to compel women to submit to military registration and induction was not premised on outmoded and constitutionally suspect notions of the "proper" economic role of women in our society. This is absolutely clear from the fact that Congress has increasingly encouraged women to *volunteer* for military service. *See, e.g.*, 14 U.S.C. § 182(a) (1976) (opening the military service academies to women). Instead, Congress concluded that while women should be afforded opportunities for freely-chosen employment or a career in the military, women should not, because of values and mores at the very root of our culture, be *forced* to join the military. As expressed by Representative Neal (126 *Cong. Rec.*, H. 293 [Jan. 28, 1980]):

> I would in no way deny women the opportunity to serve in [non-combat] roles.

> But . . . to make women serve involuntarily is quite a different matter. It opposes not only the traditions of the United States of America, but is contrary to the experience of the entire Western World—indeed, with few exceptions, the experience of civilized humankind.

CONCLUSION

For the foregoing reasons, the Movants should be granted leave to intervene as appellants if probable jurisdiction is noted.

Respectfully submitted,

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